IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNT

STATE OF DELAWARE,)
)
v.)
)
ANZARA M. BROWN,)
(ID. No. 1205025968))
)
Defenda	nt.)
	Submitted: April 5, 2013
	Decided: July 30, 2013

Nicole S. Hartman, Esq., Department of Justice, Dover, Delaware. Attorney for the State.

Sandra W. Dean, Esq., Camden, Delaware. Attorney for the Defendant.

Upon Consideration of Defendant's Motion to Suppress Evidence of Wiretap **DENIED** **State v. Anzara M. Brown** ID. No. 1205025968 July 30, 2103

ORDER

Upon consideration of the defendant's motion to suppress evidence, the State's opposition, and the record of the case, it appears that:

- 1. Defendant Anzara Brown ("Brown") moves for the suppression of telephone calls between Galen Brooks ("Brooks") and the defendant that were intercepted on May 31, 2012 and June 1, 2012. He contends that the warrant authorizing the wiretap of the phone number alleged to be Brooks', (302) 535-9787 ("9787"), was issued without probable cause.
- 2. The charges against Brown arise in the context of an extensive police investigation into an alleged drug trafficking syndicate in Kent County. The investigation largely focused on Brooks, who, at the time of the wiretap application, was believed to be the head of the alleged syndicate. The syndicate allegedly specialized in the distribution of cocaine and crack cocaine.
- 3. The State's Affidavit in Support of Application for Interception of Wire Communications (the "Affidavit") recounts the investigation into the alleged syndicate. The investigation began in 1996, and involved the use of physical and video surveillance, sixteen confidential informants, interviews with suspected associates of the alleged syndicate, pen registers, search warrants, an Attorney General Subpoena, controlled purchases of drugs by informants, and telephone calls intercepted pursuant to other wiretaps. The affiants are Detectives Jeremiah Lloyd and G. Dennis Shields of the Delaware State Police. The Affidavit is lengthy, consisting of more than eighty pages.

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- 4. The State asserts that probable cause for the wiretap of 9787 derived from what investigating officers recognized as a pattern that Brooks used when informing his alleged associates of new telephone numbers. He would contact the other person on his current telephone number and ask if that other person noticed an unusual number calling. Within minutes, the unusual number and the other person would connect. The investigators knew, based on their training and experience, that drug traffickers purchase pre-paid cellular telephones in order to conceal their illegal drug dealing activities and avoid law enforcement detection. They also note that it is imperative for drug traffickers to contact associates in order to provide those persons with their newly acquired cellular telephone numbers. The Affidavit states that Brooks exhibited a consistent pattern of obtaining new pre-paid cellular telephones every forty-five days.
- 5. The Affidavit specifies three occasions where Brooks employed this tactic in an apparent attempt to transition from his (302) 222-5082 ("5082") number to 9787. First, on May 22, 2012, at 8:32 AM, Brooks—from 5082—called an unknown male and asked that person if he saw a strange number on his phone. The unknown male responded affirmatively and Brooks told him to answer that number. The toll records associated with the unknown male's phone indicate that 5082 was in contact with him at 8:32 AM, and 9787 was in contact with him at 8:33 AM. A

¹ Investigators were monitoring 5082—and another number used by Brooks—with both a pen trap and trace device and a call interception device when the conversations that led to the application for a warrant for 9787 occurred. The pen trap and trace device for 5082 was installed on April 1, 2012, and law enforcement officers obtained court orders to intercept calls from 5082 on May 15, 2012. On May 21, 2012, the investigators began monitoring calls.

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little later, at 8:51 AM, 5082 was again in contact with the unknown male, but no conversation took place. Immediately thereafter, still at 8:51 AM, 9787 was again in contact with the unknown male. The pen trap and trace device indicated that 5082 had been in contact with the unknown male's phone number approximately 115 times between April 1, 2012 and May 22, 2012. Next, also on May 22, 2012, at 8:48 AM, Brooks called another unknown male and advised him that Brooks would call right back. The toll records associated with this unknown male's phone show that 5082 was in contact with him at 8:48 AM, and 9787 was in contact with him at 8:52 AM. The pen trap and trace device indicated that 5082 had been in contact with this unknown male approximately 254 times between April 20, 2012 and May 22, 2012. Lastly, on May 22, 2012, at 10:14 AM, Brooks called another unknown male and advised that person that Brooks had been "blowing him up"—the affiants explain that this means frequently calling. Brooks then told the unknown male to answer the telephone. The toll records associated with this unknown male's phone indicated that 9787 was in contact with him at 8:37 AM and 10:09 AM. Immediately following the call with 5082 that was monitored at 10:14 AM, 9787 was in contact with the unknown male at 10:15 AM. The pen trap and trace device indicated that 5082 had been in contact with this unknown male approximately 166 times between April 1, 2012 and May 22, 2012.

6. The police applied for and acquired the warrant authorizing the wiretap of 9787 on May 25, 2012. As mentioned, the calls that the defendant now wishes to suppress took place on May 31, 2012 and June 1, 2012.

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7. The defendant contends that the warrant was issued without probable cause to believe that communications from 9787 would reveal evidence of drug dealing. He contends that there was no evidence presented in the Affidavit that 9787 had called or been called from a number linked to Brooks. He specifically mentions the last of the three occurrences—he does not address the other two—, and argues that the police did not know the identity of either the unknown male or the person using 9787. He contends that 9787 was two steps removed from 5082, a number known to be Brooks,' and that this is too remote for probable cause to have existed. The State contends that the defendant is attempting to inflate the probable cause standard. It contends that Brooks' behavior as outlined in the Affidavit clearly demonstrated a pattern used to evade police detection of his illegal activities. It contends that there was probable cause to believe that the wiretap would lead to evidence of the syndicate's alleged drug trafficking.

8. "When presenting a motion to suppress evidence, the defendant bears the burden of establishing that the challenged search or seizure violated [his] Fourth Amendment rights." However, once the defendant has established a basis for his motion, the burden shifts to the government to show that the search or seizure was

² State v. Henson, 1997 WL 817856, at *2 (Del. Super. Nov. 26, 1997).

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reasonable.³ "The burden of proof on a motion to suppress is proof by a preponderance of the evidence."⁴

9. Title 11, Section 2407 of the Delaware Code sets forth the probable cause requirements necessary to obtain the issuance of an order authorizing a wiretap:

c) Issuance of order.--

- (1) Upon the application a judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, oral or electronic communications . . . if the judge determines on the basis of the facts submitted by the applicant that:
 - a. There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense enumerated in § 2405 of this title;
 - b. There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

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³ State v. Caldwell, 2007 WL 1748663, at *2 (Del. Super. May 17, 2007) (quoting U.S. v. Davis, 2006 WL 229897, at *4 (D. Del. Jan. 30, 2006)).

⁴ State v. Abel, 2011 WL 5221276, at *2 (Del. Super. Oct. 31, 2011) (quoting State v. Iverson, 2011 WL 1205242, at *3 (Del. Super. March 31, 2011)).

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d. There is probable cause for belief that the facilities from which or the place where the wire, oral or electronic communications are to be intercepted are being used or are about to be used in connection with the commission of the offense or are leased to, listed in the name of, or commonly used by an individual engaged in criminal activity described.⁵

"To establish probable cause, the police are only required to present facts which suggest, when *those facts* are viewed under the totality of the circumstances, that there is a fair probability that the defendant has committed a crime." The determination of probable cause by the issuing magistrate is entitled to great deference by a reviewing court.

10. I conclude that the totality of the circumstances presented in the Affidavit demonstrate that there was a fair probability that communications intercepted pursuant to the wiretap of 9787 would reveal evidence of drug trafficking undertaken by the alleged syndicate. I further conclude that there was a fair probability that 9787 was a device commonly used by Brooks, himself. The

 $^{^5}$ 11 *Del. C.* § 2407(c)(1). The defendant does not challenge subsection (c), which is known as the "necessity requirement."

⁶ State v. Maxwell, 624 A.2d 926, 930 (Del. 1993).

⁷ State v. Perry, 599 A.2d 759, 765 (Del. Super. 1990) (citing Jensen v. State, 482 A.2d 105, 111 (Del. 1984)); see also State v. Holden, 60 A.3d 1110, 1114 (Del. 2013) (discussing search warrants in general, the court noted, "[a] court reviewing the magistrate's determination has the duty of ensuring 'that the magistrate had a substantial basis for concluding that probable cause existed.' A magistrate's determination of probable cause 'should be paid great deference by reviewing courts' and should not, therefore, 'take the form of a de novo review.'"(quoting Illinois v. Gates, 462 U.S. 213, 238-39 (1983))).

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investigating officers utilized their training, their experience and their familiarity with

the investigation to come to the conclusion that Brooks was attempting to pursue his

drug business from a new pre-paid cellular phone. The Affidavit indicates that he

had moved from one pre-paid cellular phone to another at regular intervals in the past.

The three monitored conversations recited in the Affidavit were kept conspicuously

short by Brooks, and served no discernable purpose other than to encourage the

recipient to accept a call on a different number. Given the circumstances, both the

brevity and the content of these conversations were highly suggestive of an intent to

inform the other person that Brooks would be utilizing a new phone number to

transact his drug business and keep one step ahead of law enforcement. Moreover,

the volume of calls exchanged between 5082 and each of the three unknown numbers

in the weeks leading up to the aforementioned conversations, when considered in

combination with the content of the three conversations, was consistent with the

theory that they were affiliates of the alleged syndicate.

11. I conclude that the Affidavit provided a sufficient factual basis for

deciding that probable cause existed.

12. Therefore, the defendant's motion is *denied*.

IT IS SO ORDERED.

President Judge

oc: Prothonotary

cc: Order Distribution

File

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